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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,156	03/01/2004	John Carlson	52224/297559	1006
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JOHN S. PRATT, ESQ. KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309				
EXAMINER				
ENG, DAVID Y				
ART UNIT		PAPER NUMBER		
2155				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/790,156

Applicant(s)

CARLSON ET AL.

Examiner

DAVID Y. ENG

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-17, 19, 20, 29-32, 34, 36, 37 and 42-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19, 20 and 31 is/are allowed.
- 6) ☒ Claim(s) 15-17, 29-30, 32, 34, 36-37, 42-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-14, 18, 21-28, 33, 35 and 38-41 have been cancelled. Newly submitted claims 43-45 have been entered. The active claims are 15-17, 19-20, 29-32, 34, 36-37, 42-45.

Claim Rejections - 35 USC § 112, 2nd paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16, 15, 36, 44 and 45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 44 and 45 are dependent on cancelled claim 28.

With respect to claims 16 and 15, both the selected network hub server and the remote network servers are recited for polling and computing weighted averages over the network devices. It is not clear which one actually does that. Further, the selected hub server is recited to communicate with the remote server only and not with the network devices. It does not appear that the hub server is able to poll the network devices.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 16, 15, 29, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Majkowski (USP 6,564,336) in view of Levine (USP 7,028,083).

Claims 16, 29

See at least Figure 1 in Majkowski, Majkowski teaches:

A distributed network management system (Figure 1), comprising:

a selected network hub server (10) for communicating with a plurality of remote network servers;

each of said plurality of remote network servers (remote server 30) for communicating with at least one network device (database line 22 column 2) and said selected network hub server; wherein each of said remote network servers derives state information from said network device by:

polling said at least one network device at a polling interval (inherent in any monitoring system, the TSS of Majkowski is capable of initiating communication with the database so as to obtain state of the database);

sending a query related to operational status to said at least one network device;

receiving a response regarding said operational status from said at least one network device; and

computing a weighted average over at least one said polling interval using results of said polling and said responses received from said at least one network device, wherein the weighted average is a representation of the state of said network device; and

storing said weighted average.

Majkowski does not disclose using responses received from the network device to compute a weighted average over a plurality of time period. See column 2, lines 46-65 in Levine. Levine teaches a monitoring system for a network. In Levine a ping is sent to a monitored device. A response from the monitored device is used to calculate a weighted average. It would have been obvious to a person of ordinary skill in the art to use the system of Levine to calculate the weighted average in Majkowski so as to analyze the data obtained from monitoring the network device such that the purpose of monitoring the device can be achieved.

Claims 15, 44, 45

See the abstract in Majkowski. Majkowski teaches a fault tolerant system. In that, if one server is inoperative, the other one will replace the inoperative one.

Applicant's arguments with respect to claims 15, 16, 29 have been considered but are moot in view of the new ground(s) of rejection.

Allowable subject matter

Claims 19, 20 and 31 are allowed. Claims 36, 17, 42, 32, 37, 30, 43 and 34 would be given favorable consideration if claims 36, 17, 32, 37, 30 and 34 are rewritten in independent form to incorporate all the limitations in the intervening claims and the Section 112, 2nd paragraph Rejection is overcome.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID Y. ENG whose telephone number is 571-272-3984. The examiner can normally be reached on M-F from 8AM to 3PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SALEH NAJJAR, can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DAVID Y. ENG/
Primary Examiner, Art Unit 2155